No. 14761

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

EUGENE F. EVARTS, MONROVA S. EVARTS, EUGENE K. EVARTS,

Appellants,

vs.

C. J. JONES, C. S. JONES, JONES BROTHERS, C. J. JONES & ASSOCIATES, SAN ANTONIO HEIGHTS TRACT, JOHN DOE I to V, JANE DOE & DOE I to V, BLACK & WHITE COMPANY I to V, DOE & DOE CORPORATION I to V, JOHN-GREEN, doing business as Co-partnership,

Appellees.

APPELLEES' BRIEF.

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APPELLEES' BRIEF.

The Pleadings and Facts Alleged Therein Disclose a Lack of Jurisdiction.

The appellees filed a motion to dismiss the appellents' complaint upon the grounds:

(1) That there was no diversity of citizenship between the appellants and the appellees.

(2) That the appellants had filed actions in the courts of the State of California and have exhausted all of their remedies of appeal in those actions and said state court decisions have become final. [Tr. p. 3, lines 19-24.]

This motion was heard by the Honorable Ben Harrison, United States District Court Judge on March 7, 1955, and

an order was made by him dismissing the appellants' cause of action for lack of jurisdiction.

A summary of the allegations on these three grounds are as follows:

No Diversity of Citizenship.

It is alleged in paragraph III of appellants' complaint that the appellants and the appellees are all residents of Los Angeles County, California.

No Federal Question or the Construction of Any Federal Statute Involved.

It is alleged in the complaint [Pars. V, XIII; Tr. p. 409] that the controversy between the appellants and the appellees arises out of the construction of a conditional sales contract entered into between C. J. Jones, one of the appellees and Eugene F. and Monrova S. Evarts, two of the appellants, for the purchase of a parcel of real estate situated in the City of Long Beach, County of Los Angeles, State of California.

Appellants Have Exhausted All of Their Remedies of Appeal in the State Courts of California and the State Court Decisions Have Become Final.

It is alleged in appellants' complaint [Pars. 19-24; Tr. pp. 13-18] that three actions were commenced in the Superior Court of the County of Los Angeles and that judgments were rendered in each of those three cases by a judge of the Superior Court and in each case the judgments were adverse to the appellants and following the rendering of those judgments, an appeal was taken and a decision rendered by an Appellate Court affirming the judgments in each case.

A Brief Summary of the Three State Court Proceedings Referred to in the Complaint That Have Become Final.

(a) The first action was instituted by Eugene F. Evarts and Monrova S. Evarts in the Superior Court of Los Angeles County, when an amended and supplemental complaint for specific performance upon a parcel of property was filed by them on September 27, 1948. A demurrer to this amended and supplemental complaint was filed by the appellees on October 28, 1948, and this demurrer was heard on June 27, 1949, and was, by the Court on that day, sustained with ten days leave to amend. Notice to appellants that the demurrer was sustained and that they were given ten days to amend was served on them on October 7, 1949. Thereafter the motion of the appellees for a judgment of dismissal after sustaining the demurrer with leave to amend, but no amendment filed, was heard on February 27, 1950, and a judgment of dismissal was signed on February 28, 1950. An appeal was taken to the District Court of Appeal, Second Appellate District, and on May 9, 1951, the decision of Division Three of that Court was filed affirming the judgment of dismissal and is reported in 104 Cal. App. 2d 109, 231 P. 2d 74.

(b) The second action was an action filed in the Superior Court of Los Angeles County by the appellees herein to quiet title to the same parcel of real estate as is described in appellants' complaint herein. That action was filed on September 19, 1950, and after service upon appellant, Monrova S. Evarts, a demurrer was filed by her alleging that another action was pending concerning this same parcel of real property. The action which she referred to as a pending action was the above mentioned first action. When the decision in that first case became

final, the demurrer of Monrova S. Evarts was set for hearing and overruled and she filed her answer. The appellant, Eugene F. Evarts having been served and failed to appear, his default was entered thereafter on January 25, 1952. The case was tried before the Honorable George Francis and on February 13, 1952, said Judge signed Findings of Fact and Conclusions of Law and a judgment to quiet title in the appellees herein and against the appellants. An appeal was taken in that case to the District Court of Appeal and thereafter on December 2, 1952, a decision was filed affirming the Superior Court's judgment. The decision is reported in 114 Cal. App. 2d 634, and in 250 P. 2d 671.

Thereafter a motion for a recall of the remittitur in that action was filed and on April 2, 1953, the court denied that motion.

(b) Eugene K. Evarts, one of the appellants herein is the adult son of appellants Eugene F. Evarts and Monrova S. Evarts and has alleged in paragraph XXIII of the complaint [Tr. p. 16, lines 10-26], that a 90% interest in the property involved in this and the Superior Court cases was transferred to their son, Eugene K. Evarts, and he filed a quiet title action August 9, 1952, in the Superior Court of Los Angeles County against the appellees. The deed to the undivided 90% interest to said property, dated January 1, 1950, was not acknowledged until April 14, 1952, and was recorded the next day, April 15, 1952, in the office of the County Recorder of Los Angeles County. A notice of pendency of action in the second case above mentioned was recorded in the office of the County Recorder of said County on September 15, 1950.

This case was tried before the Honorable Joseph Maltby, Judge of the Superior Court of Los Angeles County on April 29, 1953, and on that date judgment was rendered

for the appellee herein and against the appellant, Eugene K. Evarts. The trial court found that the appellee was the owner of and entitled to the possession of the real property and that appellant did not have any estate, right, title or interest whatsoever in or to said real property.

An appeal was taken in said action to the District Court of Appeal, Second Appellate District and a decision was rendered by the District Court of Appeal affirming the judgment of the Superior Court. This decision was filed on September 29, 1954, and is reported in 127 Cal. App. 2d 623, and 274 P. 2d 185.

ARGUMENT.

I.

In the Absence of a Diversity of Citizenship the District Court of the United States Has No Jurisdiction.

The District Court of the United States had no jurisdiction of this action unless there was an allegation in the complaint that a diversity of citizenship existed between the plaintiff and defendants. The appellants herein and plaintiffs in the District Court alleged in paragraph III of their complaint that not only were all of the plaintiffs residents of the County of Los Angeles, but that also that all of the defendants were residents of the County of Los Angeles, State of California. Therefore, it appeared on the face of the complaint that there was not an allegation of diversity of citizenship, but on the contrary a positive allegation that the plaintiffs and defendants were all residents of Los Angeles County. In the face of such allegation the United States District Court had no jurisdiction of the appellants' action.

U. S. C. A., Sec. 1332 A(1);

Salem Trust Company v. Manufacturers Finance Company, 264 U. S. 182, 68 L. Ed. 628, 44 S. Ct. 266.

II.

The Allegations of the Complaint Are Devoted Entirely to Facts Concerning a Controversy Over the Construction of Certain Provisions of a Conditional Sales Contract for the Purchase of a Parcel of Real Estate in the City of Long Beach and There Are No Allegations of Any Matters Which Raise Any Federal Question, and the District Court Accordingly Does Not Have Jurisdiction of This Action.

The appellants alleged in their complaint that they entered into a contract for the purchase of a parcel of real estate and that if interest had been computed in a certain way as they claim it should have been on the unpaid portion of the purchase price of the property, their status under the contract would have been different than as claimed by appellees. The state court agreed with the construction as placed upon the contract by the appellees, and held against appellants construction. Therefore, the appellants were in default under the terms of their contract and their interest terminated.

There is no F. H. A. loan involved in this action or in any of the state court actions, as the appellees herein were not lenders or the appellants borrowers under any such loan. The conditional sales contract provided that the property was subject to a loan which if the appellants could meet certain qualifications and conditions could have assumed, but the appellants could not and did not meet these qualifications and others as contained in the conditional sales contract, so that they never came into the position where they were permitted to make payments on the loan or have anything to do with it. Their sole and only obligation under this contract was to make the monthly payments as provided for thereunder. Therefore,

the appellants' reference in the complaint and in the brief to Federal housing regulations are entirely irrelevant to the controversy that the appellants themselves started in 1948 by the filing of their complaint in the state court against the appellees.

The allegations in the complaint in this action are similar to those alleged in the pleadings filed by them in the state court actions and upon which evidence was presented by the appellants, both oral and documentary, to Judge Francis. The appellants now seek to have their case tried again by the United States District Court after the Superior Court has in one case ruled that their complaint did not state a cause of action and in another case found adversely to the claims and contentions of the appellants and in the third case that their adult son was not a purchaser in good faith of an undivided 90% interest in the property.

We, therefore, most respectfully submit that appellants' complaint fails to allege that their action arises under any particular article or section of the United States Constitution or under any particular act or section of any Federal law or statute and all that is alleged is the bare conclusion that a Federal question exists which is ineffective unless the matters constituting the appellants' claim for relief as set forth in the complaint on their face show or raise a Federal question.

The forms 2-b-oc contained in the appendix of forms under Rule 84 of the Rules of Civil Procedure indicate that general allegations of the existence of a Federal question are ineffective unless there are matters alleged constituting the claim for relief which discloses or raises a Federal question. There are, of course, no allegations of any such matters in this complaint.

The only relief the appellants seek in this action, and it is the same relief they sought in the state court, is for a construction or interpretation as to the method of computing interest under their conditional sales contract for the purchase of the real property.

U. S. C. A., Sec. 1331;

Columbus R., etc. Co. v. Columbus, 253 Fed. 499, 39 S. Ct. 349, 249 U. S. 399, 63 L. Ed. 669.

The trial court's jurisdiction can only arise if the complaint alleges facts which specifically present a Federal question.

III.

It Appears on the Face of the Complaint in This Action That the Superior Court of Los Angeles County Rendered Judgment in Three Cases and That Appeals Were Perfected and the Appeal Courts Affirmed the Judgments in Each Case Adverse to the Appellants, and Those Judgments Have Become Final, Therefore This Court Is Without Power to Review or Set Aside Those State Court Judgments.

The appellants have alleged in paragraphs 19-24 of their complaint that actions were filed in the Superior Court of Los Angeles County, and that following the entry of judgments in that court, all of which were adverse to them, that appeals were perfected and that the Appellate Court affirmed the judgments of the Superior Court. It is therefore apparent that the appellants have exhausted all of their remedies in the state courts and as will be noted in the summary of each of those three cases which we have set forth above, the judgments in each case have long since become final. The appellants now seek to have

the United States District Court review or set aside those judgments of the state court which are between the same parties and over the same subject matter. The appellants in making this request disregard the well established principle of law that the Federal Court has no supervisory jurisdiction over the state courts, and that state court judgments may not be reviewed by a complaint in the Federal court.

McLain v. Lance, 146 F. 2d 341, *cert. den.* 65 S. Ct. 1183, 325 U. S. 855, 89 L. Ed. 1976;

Guy v. Utecht, 144 F. 2d 913;

Parker v. Carey, 135 F. 2d 205;

Howard v. Dowd, 25 Fed. Supp. 844;

Biggs v. Ward, 212 F. 2d 209.

Conclusion.

Jurisdiction of the Federal District Court is determined by the allegations of the complaint and the appellants have failed to allege any facts that confer such jurisdiction. Therefore, the judgment of the District Court to dismiss the above action should be affirmed.

Respectfully submitted,

CLOCK, WAESTMAN & CLOCK,
By JOHN G. CLOCK,
Attorneys for Appellees.